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19 Attorneys for Plaintiff The Breakfast Klub, Inc.

20 UNITED STATES DISTRICT COURT
21 CENTRAL DISTRICT OF CALIFORNIA
22
23

24 THE BREAKFAST KLUB, INC.,

25 Plaintiffs,

26 vs.

27 1600 BREAKFAST CLUB, LLC d/b/a
28 The Breakfast Club, and JOHN DOES
1-10,

Defendants.

Case No.

COMPLAINT FOR:

- (1) **Trademark Infringement**
(15 U.S.C. § 1114)
- (2) **Unfair Competition and False**
Designation of Origin
(15 U.S.C. § 1125(a))
- (3) **State Unfair Competition (Cal.**
Bus. & Prof. Code § 17200 et seq.)

1 Plaintiff The Breakfast Klub, Inc. (“The Breakfast Klub”) brings this
2 Complaint against Defendants 1600 Breakfast Club, LLC d/b/a The Breakfast Club
3 (“TBCLA”) and John Does 1-10 and alleges as follows:

4 **INTRODUCTION**

5 1. The Breakfast Klub has operated a successful, well-known restaurant
6 in Houston, Texas for more than 20 years under THE BREAKFAST KLUB® (plus
7 design) and THE BREAKFAST KLUB HOUSTON® (plus design) marks
8 (collectively, the “BREAKFAST KLUB Marks”).

9 2. The Breakfast Klub restaurant has developed substantial good will and
10 a strong following, making it a dining attraction for both locals and the traveling
11 public visiting from other states.

12 3. Defendant TBCLA is a self-described “influencer café” and competing
13 breakfast restaurant controlled by famed restaurateur Robert Earl’s conglomerate
14 Earl Enterprises Holdings, Inc.

15 4. In 2021, TBCLA began building out its own intellectual property
16 portfolio in advance of opening the restaurant.

17 5. TBCLA attempted to register the confusingly similar mark THE
18 BREAKFAST CLUB (plus design) with the U.S. Patent & Trademark Office
19 (“PTO”).

20 6. The PTO rejected TBCLA’s registration because of a likelihood of
21 confusion with the BREAKFAST KLUB Marks.

22 7. TBCLA contacted The Breakfast Klub’s owner, Marcus Davis, and
23 asked for consent to use THE BREAKFAST CLUB mark. Mr. Davis refused.

24 8. Undeterred by the PTO’s rejection of TBCLA competing THE
25 BREAKFAST CLUB mark based on a likelihood of confusion and Mr. Davis’
26 refusal to consent to TBCLA’s usage, TBCLA knowingly and willfully proceeded
27 to brand and launch its restaurant under THE BREAKFAST CLUB mark.

28 9. TBCLA’s marketing strategy is to generate nationwide media attention

1 and buzz for its restaurant by marketing and promoting the restaurant as a social
2 media influencer café, situating it at 1600 Vine Street, in the heart of Hollywood and
3 a mere block away from the Hollywood Walk of Fame, inviting and publicizing the
4 patronage of celebrities and tourists.

5 10. TBCLA's use of THE BREAKFAST CLUB mark creates a very high
6 likelihood of reverse confusion with The Breakfast Klub's BREAKFAST KLUB
7 Marks because even though The Breakfast Klub is the undisputed senior user,
8 consumers are likely to falsely associate its goods and services as originating from
9 or have some association, affiliation, or sponsorship with TBCLA as a result of
10 TBCLA's widespread marketing and nationwide advertising efforts.

11 11. Further, because both restaurants are located in cities that are travel
12 destinations and among the most populous metropolises in the country, there is also
13 a very high likelihood of forward confusion between TBCLA's THE BREAKFAST
14 CLUB mark and The Breakfast Klub's federally-registered BREAKFAST KLUB
15 Marks.

16 **PARTIES**

17 12. Plaintiff The Breakfast Klub, Inc. is a corporation organized under the
18 laws of Texas, having its principal place of business at 3711 Travis Street, Houston,
19 Texas 77002.

20 13. Defendant 1600 Breakfast Club, LLC d/b/a The Breakfast Club is a
21 limited liability company organized under the laws of Florida, having its principal
22 place of business at 1600 Vine Street, Hollywood, California 90028. It is doing
23 business as "The Breakfast Club."

24 14. The Breakfast Klub's investigation is ongoing and the true names or
25 capacities, whether individual, corporate, or otherwise, of the defendants sued herein
26 under the names "John Does 1-10," inclusive, are unknown and they are therefore
27 sued herein as fictitious parties. The Breakfast Klub will amend this Complaint to
28 show their true names and capacities if and when they are ascertained. The Breakfast

1 Klub is informed and believes, and on such information and belief alleges, that each
 2 of the defendants named as a “John Doe” is responsible in some manner for the
 3 unlawful events and occurrences alleged in this Complaint and is liable for the relief
 4 sought herein. This includes, but is not limited to, personal liability for all corporate
 5 officers, directors, employees, and agents authorizing, directing, and/or participating
 6 in the infringement alleged herein.

7 **JURISDICTION AND VENUE**

8 15. This is an action for trademark infringement arising under 15 U.S.C.
 9 § 1114, unfair competition and false designation of origin arising under 15 U.S.C.
 10 § 1125(a), and for common law unfair competition under California law.

11 16. This Court has original subject matter jurisdiction under 15 U.S.C.
 12 § 1121 and 28 U.S.C. §§ 1331 and 1338, and this Court has supplemental
 13 jurisdiction over the state law claims based on 28 U.S.C. § 1367.

14 17. This Court has personal jurisdiction over TBCLA because it is engaged
 15 in substantial and regular business in the State of California and in the Central
 16 District of California, including by operating a restaurant and selling its services at
 17 a location in the Central District of California.

18 18. Venue is proper in this judicial district under 28 U.S.C. § 1391(b)(1)
 19 and (b)(2) because TBCLA resides in this judicial district for venue purposes and a
 20 substantial part of the events giving rise to the claims asserted in this Complaint
 21 occurred within this judicial district.

22 **FACTUAL BACKGROUND**

23 **I. The Breakfast Klub’s Well Known Marks**

24 19. The Breakfast Klub has operated a well-known breakfast restaurant in
 25 Houston’s Midtown neighborhood for over 20 years under THE BREAKFAST
 26 KLUB® and THE BREAKFAST KLUB HOUSTON® word marks and their
 27 associated design marks (collectively, the “BREAKFAST KLUB Marks”):

28 20. The Breakfast Klub’s use of the BREAKFAST KLUB Marks

1 constitutes use in interstate commerce since at least 2001.

2 21. The Breakfast Klub also operates a second location in the George Bush
3 Intercontinental Airport, which it opened in 2018.

4 22. In addition to its restaurant and catering services, The Breakfast Klub
5 also sells goods on its website under the BREAKFAST KLUB Marks, including
6 waffle and pancake mix, coffee, seasoning, fish fry batter, fried chicken coating,
7 coffee mugs, and apparel.

8 23. The Breakfast Klub applied for a federal registration of THE
9 BREAKFAST KLUB HOUSTON® word mark and associated design mark on
10 August 27, 2003, and the PTO granted that registration on December 19, 2006. It is
11 the owner of U.S. Registration No. 3,185,182 for the following word and design
12 mark:



13
14
15 24. A true and correct copy of the Certificate of Registration for THE
16 BREAKFAST KLUB HOUSTON® mark is attached hereto as Exhibit 1.

17 25. THE BREAKFAST KLUB HOUSTON® mark is registered in
18 International Class 43 for “Restaurant, bar and catering services.

19 26. The registration for THE BREAKFAST KLUB HOUSTON® became
20 incontestable by June 2012.

21 27. The Breakfast Klub applied for a federal registration of THE
22 BREAKFAST KLUB® word and associated design mark on February 19, 2017, and
23 the PTO granted that registration on May 22, 2018. It is the owner of U.S.
24 Registration No. 5,472,759 for the following word and design mark:



25
26
27
28 28. A true and correct copy of the Certificate of Registration for THE

1 BREAKFAST KLUB® mark is attached hereto as Exhibit 2.

2 29. THE BREAKFAST KLUB® mark is registered in International Class
3 30 for “Pancake mixes; Seasoned coating for meat, fish, poultry; Spices; Waffle
4 mixes; Hotcake mixes; Instant pancake mixes; Seasoning mixes; Spice mixes; all of
5 the foregoing for regular retail sale only and not for foodservice use”; and also in
6 International Class 43 for “Restaurant, bar and catering services.

7 30. Through the continuous and uninterrupted use of the BREAKFAST
8 KLUB Marks, The Breakfast Klub has developed extensive good will, nationwide
9 notoriety, and customer recognition as a culinary attraction.

10 31. The Breakfast Klub has been recognized and featured in numerous
11 national and local publications, including Good Morning America, USA Today,
12 Houston Chronicle, Esquire, Forbes, and the Houston Press.

13 **II. TBCLA Is a Sophisticated and Savvy Infringer**

14 32. Although TBCLA is a relatively new company, it is not new to the
15 concept and value of intellectual property rights.

16 33. TBCLA is controlled by Earl Enterprise Holdings, Inc. d/b/a Earl
17 Enterprises, which is a sophisticated and self-described “International Leader in
18 Restaurants, Hotels and Entertainment” owned by restaurateur Robert Earl.

19 34. In addition to TBCLA, Earl Enterprises owns hundreds of restaurants
20 and controls numerous trademarked restaurant chains including Planet Hollywood,
21 Buca di Beppo, Earl of Sandwich, Chicken Guy!, and Café Hollywood.

22 35. Earl Enterprises employs thousands of people and generates
23 hundreds of millions of dollars in annual sales.

24 36. The Earl Enterprises conglomerate also controls a prolific intellectual
25 property portfolio, with hundreds of service mark and trademark applications
26 associated with its sprawling business enterprise.

27 **III. TBCLA Knew About the BREAKFAST KLUB Marks**

28 37. In January 2020, TBCLA applied to the PTO for registration of THE

1 BREAKFAST CLUB (plus design) mark, which TBCLA described in its application
2 as a mark consisting of “THE BREAKFAST CLUB with the words stacked on top
3 of each other; the ‘B’ and ‘T’ in breakfast have notches missing from the letters to
4 signify bite marks; at the top is a reclining, yawning panda bear.” Exhibit 3,
5 TBCLA’s Trademark Application.

6 38. The PTO issued a Final Office Action in November 2020 refusing
7 registration of TBCLA’s mark “because of a likelihood of confusion with the marks
8 in U.S. Registration Nos. 3185182 (THE BREAKFAST KLUB HOUSTON) and
9 5472759 (THE BREAKFAST KLUB).” Exhibit 4, Nov. 20, 2020 Final Office
10 Action; *see also* Exhibit 5, Apr. 11, 2020 Non-Final Office Action (reaching the
11 same determination).

12 39. In other words, the PTO expressly rejected TBCLA’s trademark
13 application for THE BREAKFAST CLUB because it created a likelihood of
14 confusion with the BREAKFAST KLUB Marks. Exhibit 5, Nov. 20, 2020 Final
15 Office Action. The PTO reasoned that the marks contain “nearly identical phrases,”
16 the addition of a design element “does not obviate the similarity of the mark,” and
17 the goods and services are identical or virtually identical. *Id.* (rejecting TBCLA’s
18 arguments the marks were diluted by other use).

19 40. TBCLA eventually abandoned its application to register its mark for
20 THE BREAKFAST CLUB.

21 41. Interestingly, this was not the first time that the PTO had thwarted
22 attempts by TBCLA’s owner, Earl Enterprises, to register the infringing mark for
23 THE BREAKFAST CLUB.

24 42. In June 2018, another Earl Enterprises company, Planet Hollywood
25 (Region IV), Inc. (“Planet Hollywood”), applied to register THE BREAKFAST
26 CLUB stylized word mark and THE BREAKFAST CLUB (plus design) mark (the
27 latter of which is identical to TBCLA’s infringing mark). *See* Exhibit 6, Planet
28 Hollywood Trademark App. Serial No. 88,013,997; Exhibit 7, Planet Hollywood

1 Trademark App. Serial No. 88,014,088.

2 43. For the same reasons the PTO would later cite in the April 11, 2020
3 Non-Final Office Action and the November 20, 2020 Final Office Action, the PTO
4 rejected Earl Enterprises first and second attempts to register the infringing THE
5 BREAKFAST CLUB marks: a likelihood of confusion with the registered
6 BREAKFAST KLUB Marks (in addition to other marks).

7 44. Planet Hollywood also abandoned these marks following the PTO's
8 refusal.

9 45. The same attorney that filed Planet Hollywood's applications in 2018
10 also filed TBCLA's application in 2020.

11 46. In the 2020 application for TBCLA, the attorney submitted a
12 declaration affirming, under penalty of fine or imprisonment, or both, under 18
13 U.S.C. § 1001, that "To the best of the signatory's knowledge and belief, no other
14 persons, except, if applicable, concurrent users, have the right to use the mark in
15 commerce, either in the identical form or in such near resemblance as to be likely,
16 when used on or in connection with the goods/services of such other persons, to
17 cause confusion or mistake, or to deceive." Exhibit 3, TBCLA's Trademark
18 Application.

19 47. TBCLA's 2020 trademark application failed to disclose to the PTO that
20 the PTO had rejected an identical application and a substantially similar application
21 six months earlier on the basis of a likelihood of confusion with The Breakfast
22 Klub's federally-registered BREAKFAST KLUB Marks.

23 **IV. TBCLA Decided to Willfully and Intentionally Infringe**

24 48. The Breakfast Klub first learned TBCLA was considering using THE
25 BREAKFAST CLUB mark in 2021 when TBCLA's attorney contacted The
26 Breakfast Klub to ask whether it would consent to TBCLA's use of the mark.

27 49. The Breakfast Klub refused to grant TBCLA consent to infringe its
28 BREAKFAST KLUB Marks.

1 50. One would assume that after being rejected three separate times by the
 2 PTO based on the basis of a likelihood of confusion and after asking for and being
 3 denied consent to use THE BREAKFAST CLUB mark, that the owners of TBCLA
 4 would select a different, non-infringing mark. Indeed, The Breakfast Klub made that
 5 assumption.

6 51. TBCLA, however, was undeterred.

7 52. Even though it had not yet opened its restaurant and could have chosen
 8 a new mark, it consciously and willfully decided to move forward with using THE
 9 BREAKFAST CLUB mark for its restaurant.

10 **V. TBCLA Engages in a Media Blitz**

11 53. At least by August 2021, TBCLA began operating a breakfast food
 12 restaurant at 1600 Vine Street in Hollywood, California under the mark THE
 13 BREAKFAST CLUB.

14 54. By design, TBCLA aspires to obtain nationwide notoriety and acclaim
 15 as an influencer café that caters to those wanting to see and be seen, including social
 16 media influencers, celebrities, and brands seeking to co-opt the groundswell of
 17 publicity and buzz TBCLA is generating for itself.

18 55. The grand opening of TBCLA on September 21, 2021 is a prime
 19 example of this. Through concerted efforts to saturate the media with mention and
 20 discussion of TBCLA and its infringing use of THE BREAKFAST CLUB mark,
 21 TBCLA ensured that numerous “stars” were in attendance for the opening of what
 22 was billed as “Hollywood’s newest social club.” The “stars” in attendance, clearly
 23 designed to attract paparazzi, included Sofia Vergara, Paula Abdul, Mario Lopez
 24 and his wife Courtney Laine Mazz, models Jeremy Meeks and Kara Del Toro, A-
 25 list celebrity barber Jc tha Barber, and DJ Khaled. The grand opening also featured
 26 co-marketing efforts from other brands like BlesswellCo and Von Dutch.

27 56. On its website (<https://www.TheBreakfastClubLA.com/>) and social
 28 media pages on Facebook (<https://www.facebook.com/TheBreakfastClubLA>),

1 Instagram (<https://www.instagram.com/TheBreakfastClubLA/>), TikTok ([https://](https://www.tiktok.com/@TheBreakfastClubLA)
 2 www.tiktok.com/@TheBreakfastClubLA), and Twitter ([https://twitter.com/](https://twitter.com/BreakfastClubLA)
 3 [BreakfastClubLA](https://twitter.com/BreakfastClubLA)), TBCLA actively postures itself as “an influencer café where
 4 vloggers and social media stars come to socialize.” In other words, TBCLA aspires
 5 to utilize traditional advertising methods and also harness the power of social media
 6 and its biggest stars to access and advertise to a huge audience of potential
 7 consumers throughout the United States.

8 57. For example in the short time that TBCLA’s restaurant has been open
 9 and operating under the infringing mark THE BREAKFAST CLUB, it has already
 10 achieved a high level of social media interactions and engagements:

11 **facebook**

- 12 • 2,168 check-ins
- 13 • 592 likes
- 14 • 618 followers
- 15 • 114 posts

 **Instagram**

- 12 • 16,700 followers
- 13 • 82 posts

 **TikTok**

- 12 • 1,718 followers
- 13 • 6,124 likes
- 14 • 40 video posts

16 58. Aside from its own native content posted to social media, TBCLA has
 17 actively promoted the use of hashtags to correlate and transform supposedly
 18 unsponsored or unpaid customer promotion on social media into active advertising
 19 and marketing material for TBCLA. For example, the TikTok hashtags
 20 #TheBreakfastClubLA and #BreakfastClubLA reports more 59,000 views and
 21 returns content created both by TBCLA and by “influencers” engaged in co-
 22 marketing efforts with TBCLA. The same effect occurs with hashtags on other social
 23 media websites: TBCLA is saturating the internet with its infringing use of THE
 24 BREAKFAST CLUB mark.

25 59. TBCLA has also positioned itself at the after-party location for such
 26 high profile events as the premier of JoJo Siwa’s full length movie “The J Team.”

27 60. TBCLA has also orchestrated numerous media appearances, including
 28 features in television interviews and online publications:

- a. *LA Weekly*: The Breakfast Club opens in the Heart of Hollywood and Its Bitchin, available at <https://www.laweekly.com/the-breakfast-club-opens-in-the-heart-of-hollywood-and-its-bitchin/>;
- b. *Restaurant-Hospitality.com*: Virtual Dining Concepts, Planet Hollywood founder Robert Earl creates new brick-and-mortar restaurant: The Breakfast Club, available at <https://www.restaurant-hospitality.com/new-restaurant-concepts/virtual-dining-concepts-planet-hollywood-founder-robert-earl-creates-new>;
- c. *NBC Los Angeles*: The Breakfast Club Boasts Breakfast Pizzas, Bagel Towers, available at <https://www.nbclosangeles.com/the-scene/the-breakfast-club-boasts-breakfast-pizzas-bagel-towers/2754757/>;
- d. *360 Magazine*: Featuring a special holiday drink available at “The Breakfast Club,” available at <https://www.the360mag.com/holiday-sip-list/>;
- e. *KTLA TV*: ‘Influencer cafe’ opens in Hollywood, led by Planet Hollywood co-founder, available at <https://ktla.com/5-live/influencer-cafe-opens-in-hollywood-led-by-planet-hollywood-co-founder/>;
- f. *Restaurant-Hospitality.com*: promoting the special “Everything Gimlet” drink available at The Breakfast Club, available at <https://www.restaurant-hospitality.com/food-drink/new-menu-lamb-pastrami-and-nagoya-beef-stew/gallery?slide=3>.

61. Indeed, in an August 25, 2021 “California Live” feature on NBC the self-proclaimed founder, Robbie Earl, touted TBCLA’s lineage by citing his father’s founding of Planet Hollywood, that TBCLA is intended to be Generation Z’s Planet Hollywood, and that the location of the restaurant at 1600 Vine Street is intended to

1 harness the power of social media influencers to amplify a brand's presence and
 2 awareness in the minds of consumers. See [https://www.nbcbayarea.com/](https://www.nbcbayarea.com/entertainment/california-live/a-picture-perfect-breakfast-club/2640724/)
 3 [entertainment/california-live/a-picture-perfect-breakfast-club/2640724/](https://www.nbcbayarea.com/entertainment/california-live/a-picture-perfect-breakfast-club/2640724/).

4 62. The relevance of this location—1600 Vine Street—to TBCLA's
 5 strategy for nationwide media saturation has been discussed in numerous
 6 publications. For example, the New York Times observed that "[t]he building at
 7 1600 Vine functions as dormitory and studio lot for some of the internet's biggest
 8 stars." See Daisuke Wakabayashi, *Inside the Hollywood Home of Social Media's*
 9 *Stars. (Don't Be Shy.)*, NYTimes.com (last accessed May 11, 2022), available at
 10 [https://www.nytimes.com/2017/12/30/business/hollywood-apartment-social-media](https://www.nytimes.com/2017/12/30/business/hollywood-apartment-social-media.html)
 11 [.html](https://www.nytimes.com/2017/12/30/business/hollywood-apartment-social-media.html). In other words, TBCLA selected a location that is a magnet for existing social
 12 media influencers, those who hope to become social media influencers, and tourists
 13 and locals alike who desire a brush with fame.

14 63. On review websites Yelp and TripAdvisor, the TBCLA has collectively
 15 obtained several hundred customer reviews. Indeed, many of the reviews explicitly
 16 acknowledge the impact TBCLA's social-media-influencer marketing strategy has
 17 had on the decision to patron the restaurant. Many of the reviews are unfavorable.

18 64. In addition to its in-person restaurant services, TBCLA also offers for
 19 sale on its website promotional apparel (Breakfast Club Von Dutch Trucker Hats)
 20 and food delivery services.

21 **VI. There Is a Very High Likelihood of Confusion**

22 65. As recognized by the PTO in its three rejections, TBCLA's THE
 23 BREAKFAST CLUB mark is likely to cause consumer confusion with The
 24 Breakfast Klub's BREAKFAST KLUB Marks because, among other things, the
 25 marks and the goods and services are virtually identical. Furthermore, both marks
 26 are used in online marketing channels. And both TBCLA and The Breakfast Klub
 27 offer physical goods for sale nationwide through the internet.

28 66. The confusion here occurs in two principal forms. TBCLA's use of

1 THE BREAKFAST CLUB mark is likely to cause reverse confusion because its
2 concerted nationwide media blitz, celebrity and influencer engagement, and social
3 media presence are likely to cause consumers to falsely believe that The Breakfast
4 Klub, which is the senior user of the BREAKFAST KLUB Marks, is associated or
5 affiliated with TBCLA, even though TBCLA is the junior user. In other words,
6 reverse confusion is actionable to “protect the small senior user from losing control
7 over its identity in ‘the rising tide of publicity associated with the junior mark.’”
8 *Boldface Licensing+Branding v. By Lee Tillett*, 940 F. Supp. 2d 1178, 1187 (C.D.
9 Cal. 2013).

10 67. The other form of confusion is forward confusion, meaning that
11 consumers interacting with TBCLA are likely to be confused into believing The
12 Breakfast Klub is the source of origin, a sponsor of, or otherwise approves of
13 TBCLA’s goods and services offered under the infringing THE BREAKFAST
14 CLUB mark.

15 68. The Breakfast Klub demanded that TBCLA cease use of the infringing
16 THE BREAKFAST CLUB mark, but it refused on the theory that because The
17 Breakfast Klub is in Houston and TBCLA is in Hollywood, then TBCLA is free to
18 use THE BREAKFAST CLUB mark knowing it is virtually identical to the
19 BREAKFAST KLUB Marks.

20 69. TBCLA is legally wrong for several reasons, and morally mistaken in
21 its decision to willfully and intentionally infringe. TBCLA’s concept of territoriality
22 as a defense is inapplicable in a reverse confusion case because the trademark harm
23 is in the spread of the junior user’s influence in violation of the senior user’s
24 nationwide rights. Additionally, both TBCLA and The Breakfast Klub are
25 destination restaurants located in two of the largest cities in the United States, with
26 one of The Breakfast Klub’s locations found in an international airport with a current
27 average of at least 35 non-stop daily flights to and from Los Angeles International
28 Airport and more than 16 million total passengers enplaned at the George Bush

1 Intercontinental Airport in 2021. TBCLA also knew of The Breakfast Klub's
2 BREAKFAST KLUB marks, knew of the likelihood of confusion with those marks,
3 yet willfully, intentionally, and maliciously chose to begin using the infringing THE
4 BREAKFAST CLUB mark.

5
6 **FIRST CLAIM FOR RELIEF**
7 **Federal Trademark Infringement**
8 **15 U.S.C. § 1114**

9 70. The Breakfast Klub incorporates by reference as if restated herein the
10 allegations of the preceding paragraphs.

11 71. The Breakfast Klub is the owner of the federal registrations for THE
12 BREAKFAST KLUB® mark and THE BREAKFAST KLUB HOUSTON® mark,
13 the latter of which is now incontestable.

14 72. The BREAKFAST KLUB Marks have been in continuous and
15 uninterrupted use in interstate commerce by The Breakfast Klub.

16 73. TBCLA knowingly used and continues to use in commerce, without
17 The Breakfast Klub's permission or authorization, the BREAKFAST KLUB Marks,
18 and/or confusingly similar marks, in connection with TBCLA's goods and services
19 that it promotes, advertises, offers for sale, and sells in the United States.

20 74. TBCLA's use of BREAKFAST KLUB Marks has caused and is likely
21 to cause confusion, deception, and mistake by creating the false and misleading
22 impression that The Breakfast Klub's goods and services are produced or distributed
23 by TBCLA, or are associated or connected with TBCLA, or have the sponsorship,
24 endorsement, or approval of TBCLA.

25 75. Additionally and/or alternatively, TBCLA's use of BREAKFAST
26 KLUB Marks has caused and is likely to cause confusion, deception, and mistake by
27 creating the false and misleading impression that TBCLA's goods and services are
28 produced or distributed by The Breakfast Klub, or are associated or connected with
The Breakfast Klub, or have the sponsorship, endorsement, or approval of The

1 Breakfast Klub.

2 76. TBCLA's infringing use of THE BREAKFAST CLUB mark is
3 confusingly similar to The Breakfast Klub's federally registered BREAKFAST
4 KLUB Marks in violation of 15 U.S.C. § 1114.

5 77. TBCLA's activities are causing and, unless enjoined by this Court, will
6 continue to cause a likelihood of confusion and deception of members of the public,
7 and, additionally, injury to The Breakfast Klub's goodwill and reputation as
8 embodied in The Breakfast Klub's BREAKFAST KLUB Marks, for which The
9 Breakfast Klub has no adequate remedy at law.

10 78. TBCLA's actions demonstrate an intentional, willful, and malicious
11 intent to trade on the goodwill associated with The Breakfast Klub's BREAKFAST
12 KLUB Marks, resulting in great and irreparable harm.

13 79. TBCLA has profited and is profiting from such infringement, and The
14 Breakfast Klub has been and is being damaged by such infringement.

15 80. TBCLA caused and is likely to continue causing substantial injury to
16 the public and to The Breakfast Klub, and The Breakfast Klub is entitled to
17 injunctive relief and to recover TBCLA's profits, actual damages, enhanced profits
18 and damages, any other compensable damages (including but not limited to damages
19 for corrective advertising), costs, and reasonable attorneys' fees under 15 U.S.C.
20 §§ 1114, 1116, and 1117.

21
22 **SECOND CLAIM FOR RELIEF**
23 **Unfair Competition and False Designation of Origin**
24 **15 U.S.C. § 1125(a)**

25 81. The Breakfast Klub incorporates by reference as if restated herein the
26 allegations of the preceding paragraphs.

27 82. The Breakfast Klub's BREAKFAST KLUB Marks have acquired
28 distinctiveness and enjoy secondary meaning among consumers and identify The
Breakfast Klub as the source of the goods and services with which they are used.

1 83. TBCLA has knowingly used and continue to use in interstate
2 commerce, without The Breakfast Klub's permission or authorization, The Breakfast
3 Klub's BREAKFAST KLUB Marks, and/or confusingly similar marks, in
4 connection with TBCLA's goods and services that it promotes, advertises, offers for
5 sale, and sells in the United States.

6 84. TBCLA's use of BREAKFAST KLUB Marks, and/or confusing
7 similar marks, has caused and is likely to cause confusion, deception, and mistake
8 by creating the false and misleading impression that The Breakfast Klub's goods and
9 services are produced or distributed by TBCLA, or are associated or connected with
10 TBCLA, or have the sponsorship, endorsement, or approval of TBCLA.

11 85. Additionally and/or alternatively, TBCLA's use of BREAKFAST
12 KLUB Marks, and/or confusingly similar marks, has caused and is likely to cause
13 confusion, deception, and mistake by creating the false and misleading impression
14 that TBCLA's goods and services are produced or distributed by The Breakfast
15 Klub, or are associated or connected with The Breakfast Klub, or have the
16 sponsorship, endorsement, or approval of The Breakfast Klub.

17 86. TBCLA has made false representations, false descriptions, and false
18 designations of, on, or in connection with its goods and services in violation of 15
19 U.S.C. § 1125(a). TBCLA's activities have caused and, unless enjoined by this
20 Court, will continue to cause a likelihood of confusion and deception of members of
21 public, and, additionally, injury to The Breakfast Klub's goodwill and reputation as
22 embodied in the BREAKFAST KLUB Marks, for which The Breakfast Klub has no
23 adequate remedy at law.

24 87. TBCLA's actions demonstrate an intentional, willful, and malicious
25 intent to trade on the goodwill associated with The Breakfast Klub's BREAKFAST
26 KLUB Marks, resulting in great and irreparable harm.

27 88. TBCLA has profited and is profiting from such infringement, and The
28 Breakfast Klub has been and is being damaged by such infringement.

89. TBCLA's actions demonstrate an intentional, willful, and malicious intent to trade on the goodwill associated with The Breakfast Klub's BREAKFAST KLUB Marks to the great and irreparable injury of The Breakfast Klub. TBCLA's conduct has caused, and is likely to continue causing, substantial injury to the public and to The Breakfast Klub. The Breakfast Klub is entitled to injunctive relief and to recover TBCLA's profits, actual damages, enhanced profits and damages, any other compensable damages (including but not limited to damages for corrective advertising), costs, and reasonable attorneys' fees under 15 U.S.C. §§ 1125(a), 1116, and 1117.

THIRD CLAIM FOR RELIEF
State Law Unfair Competition under
Cal. Bus. & Prof. Code § 17200 *et seq.*

90. The Breakfast Klub incorporates by reference as if restated herein the allegations of the preceding paragraphs.

91. TBCLA has been and is engaged in unlawful, unfair and/or fraudulent business practices in violation of California Business & Professions Code § 17200, *et seq.*

92. TBCLA has intentionally traded upon and unfairly benefited from The Breakfast Klub's valuable goodwill, reputation, and substantial marketing and promotion, and have been unjustly enriched thereby.

93. TBCLA has misappropriated for itself the commercial value of The Breakfast Klub's BREAKFAST KLUB Marks and have harmed the value of The Breakfast Klub's goodwill in the BREAKFAST KLUB Marks.

94. TBCLA's acts greatly and irreparably damage The Breakfast Klub and will continue to so damage The Breakfast Klub unless restrained by this Court. As a result, The Breakfast Klub is without an adequate remedy at law. Accordingly, The Breakfast Klub is entitled to, among other things, restitution in an amount to be determined at trial, any other compensable damages (including but not limited to

1 damages for corrective advertising), punitive damages, and an order enjoining and
2 restraining TBCLA from advertising and selling infringing goods and services.

3 **PRAYER FOR RELIEF**

4 The Breakfast Klub respectfully requests that the Court enter judgment in its
5 favor and against TBCLA as follows:

- 6 A. Preliminary and/or permanent injunctive relief prohibiting further
7 infringement of the BREAKFAST KLUB Marks, including (i) a
8 prohibition on any further marketing, distribution, or use of any
9 materials or media containing “Breakfast Club” or any other infringing
10 use of the BREAKFAST KLUB Marks, and (ii) an order directing
11 TBCLA to destroy all materials or media in the possession, custody, or
12 control of TBCLA that violate The Breakfast Klub’s rights.
- 13 B. An award to compensate The Breakfast Klub for the harm suffered as
14 a result of TBCLA’s infringement, including but not limited to an
15 award of money damages for prospective corrective advertising of a
16 duration and scope sufficient to remedy, to the extent possible, the harm
17 caused by TBCLA’s infringement.
- 18 C. An award of all profits received by TBCLA in connection with its
19 infringement of the BREAKFAST KLUB Marks.
- 20 D. An award of trebled and enhanced damages as provided for under 15
21 U.S.C. § 1117 based on TBCLA’s knowing and intentional use of a
22 mark that is confusingly similar to The Breakfast Klub’s BREAKFAST
23 KLUB Marks.
- 24 E. An award of Plaintiff’s attorneys’ fees in accordance with 15 U.S.C.
25 § 1117.
- 26 F. An award of punitive damages.
- 27 G. An award of all costs of this civil action.
- 28 H. An award of prejudgment and post-judgment interest on all monetary

1 awards.

2 I. All other relief, in The Breakfast Klub's favor, that the Court deems
3 just and proper.

4 **JURY DEMAND**

5 The Breakfast Klub hereby demands a trial by jury on all claims and issues so
6 triable.

7 DATED: May 31, 2022

JONES WALKER LLP

8
9 By:

10 /s/ John W. Mills

11 John W. Mills

12 Attorneys for Plaintiff

13 The Breakfast Klub, Inc.
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